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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,852	06/27/2003	Keith M. Orr	104934-0002	8742

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,852

Applicant(s)

ORR ET AL.

Examiner

Christopher Bottorff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on October 2, 2003 was considered by the examiner.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flexible attachment member recited in claim 10 and the engagement element formed on a boot recited in claim 11 must be shown or the features canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 13, and 24 each recite the terms "pivotal movement... about a central axis" on lines 8, 6, and 8 respectively. Applicants define "pivotal" on page 5, lines 6-8, of the specification as "intended to include pitch and roll movement, or some combination of pitch and roll movement, about a substantially fixed central axis." However, pitch and roll movements in an object, such as the claimed device, occur about two separate axes rather than one fixed axis. Thus, the use of "pivotal" in the claims does not invoke the definition of "pivotal" provided in the specification. For the purposes of examination, "pivotal" is given its ordinary meaning, defined by Merriam Webster's Collegiate Dictionary, tenth edition, 1997, as "to turn."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 10-13, 23, 24, and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Metzger et al. US 5,577,755.

Metzger et al. disclose a recreational riding device comprising an elongate board member 90 having upper and lower surfaces and a binding system 10. See Figure 1. The binding system 10 has a base plate 40 having an upper surface adapted to support a rider's foot, and an opposed lower surface oriented adjacent to and spaced apart from the recreational riding device. A support base 20 is removably mated to the elongate board member 90 and defines a central axis. A connecting element 60 mates the base plate 40 to the support base 20 and is adapted to allow pivotal movement of the base plate 40 about the central axis with respect to the support base 20 and elongate board member 90. See column 2, lines 46 and 57-66, and column 3, lines 1 and 2.

The connecting element 60 comprises a support ring 65 hingedly connected to the base plate 40 to allow pivotal movement of the base plate 40. See Figures 1, 3, and

5. The support ring 65 is adapted to mate to the support base 20 via pin 66. See Figure 5. The base plate 40 includes at least one flexible attachment member adapted to engaging a rider's foot, which serves as a binding member, and the base plate 40 includes an engagement element 52 formed thereon for mating with a corresponding engagement element formed on a boot worn by the rider. See column 2, lines 49-54. At least one locking member 66 is adapted to prevent pivotal movement of the base plate 40 in a particular direction about the central axis and the locking member 66 is disposed between the base plate and the elongate board member. See Figures 1 and 5.

Claim 13 is rejected under 35 U.S.C. 102(e) as being anticipated by Humbel US 6,428,032.

Humbel discloses a binding support system for mounting a rider's foot to a recreational riding device. The system comprises a base plate 15 (including the plate to which bolts 16 are attached and from which prongs 32 extend) having a first, lower, surface adjacent to and spaced apart from a surface of a recreational riding device and a second, upper, surface adapted to support the rider's foot. See Figure 2. At least one connecting element 7 is provided and is adapted to connect the base plate to the recreational riding device such that the base plate is capable of pivotal movement about a fixed central axis. See column 3, lines 39-60.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9-12, 14-17, 19, 20, and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humbel US 6,428,032 in view of Acuna, Jr. US 5,876,045.

Humbel further discloses a recreational riding device comprising an elongate board member 3 having upper and lower surfaces. See Figure 1. The binding system further has a support that is mated to the elongate board member and defines a central axis axially along screw 8. See column 3, lines 54-60. The connecting element 7 mates the base plate to the support and is adapted to allow pivotal movement of the base plate about the central axis with respect to the support and elongate board member. See column 3, lines 39-60.

The connecting element 7 comprises a support ring 70 hingedly connected to the base plate to allow pivotal movement of the base plate. See Figures 1, 2, and 5 and column 3, lines 51-54. The support ring is adapted to mate to the support. See column 3, lines 54-60. At an interface between the support ring and the base plate, the base plate includes at least one slot, formed by forks 93, formed therein for receiving at least one pin member 71a formed on the support ring, the at least one slot and pin members being effective to prevent rotation between the base plate and the support ring in the horizontal plane. See Figures 2 and 5. Each of an inner surface of the support ring and an outer surface of the support includes cooperating surface features formed thereon

and are effective to prevent rotational movement of the support ring with respect to the support. See column 3, lines 54-60.

Two compression members 17 are adapted to removably mate to the lower surface of the base plate. See Figures 2 and 5. The compression members 17 are effective to compress between the base plate and the recreational riding device in response to a force applied to at least one of the base plate and the recreational riding device. See Figures 2 and 5 and note that compression of members 17 occurs at a location between the base plate and the recreational riding device. The compression members 17 are each spaced substantially equidistant from one another and from a central axis of the base plate. See Figures 2 and 5.

The base plate includes at least one flexible attachment member 33 adapted to engaging a rider's foot, which flexible attachment member serves as a binding member. See Figure 2; column 4, lines 19-30; and column 7, lines 12-17. The base plate includes an engagement element 28 formed thereon for mating with a corresponding engagement element formed on a boot worn by the rider. See Figure 2 and column 7, lines 35-38. At least one locking member, in the form of a knurled surface, is adapted to prevent pivotal movement of the base plate in a particular direction about the central axis and the locking member is disposed between the base plate and the elongate board member. See column 3, lines 54-60. Also, the base plate includes a central opening 14 adapted to surround the support. See Figure 2.

Although Humbel discloses that the base plate mates to the support in the manner known generally (see column 3, lines 57-60), Humbel does not disclose that the

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manner known generally is to provide the support as a support base with a first end adapted to mount upon the recreational riding device and a second end adapted to be oriented adjacent the rider's foot with the fixed central axis extending between the first and second ends of the support base. Humbel also does not disclose that the at least one slot is formed on the support ring and the at least one pin member is formed on the base plate, but that that the at least one slot is formed on the base plate and the at least one pin member is formed on the support ring. In addition, Humbel also does not disclose third and fourth compression members.

However, Acuna, Jr. teaches a manner of mating a base plate to a support that is known generally is to provide the support as a support base 15 with a first, lower, end adapted to mount upon the recreational riding device and a second, upper, end adapted to be oriented adjacent the rider's foot with a fixed central axis, at shaft 40, extending between the first and second ends of the support base. See Figure 2. A knurled surface 28 of the support base 15 connects with a knurled surface 30 of the base plate 10. See column 3, lines 30-34. From the teachings of Acuna, Jr., providing the support of Humbel as a support base with a first end adapted to mount upon the recreational riding device and a second end adapted to be oriented adjacent the rider's foot such that the fixed central axis extending between the first and second ends of the support base would have been obvious to one of ordinary skill in the art at the time he invention was made. Providing this arrangement would be effective in allowing the base plate to be arranged in the desired angle and position relative to the recreational riding device while also allowing the base plate to be held in position.

In regard to the arrangement of the slot and pin, forming the slot on the support ring and the at least one pin member on the base plate, rather than the at least one slot on the base plate and the at least one pin member on the support ring as disclosed by Humbel, represents a reversal of part that would have been obvious to one of ordinary skill in the art at the time the invention was made. Such a modification would provide an effective pivotal connection between the base plate and support ring.

Claims 6-8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humbel US 6,428,032 in view of Acuna, Jr. US 5,876,045 as applied to claims 5 and 16 above, and further in view of Knapschafer US 5,971,419.

Humbel also does not disclose third and fourth compression members. However, Knapschafer teaches the desirability of providing a binding system with four compression members 46 spaced substantially equidistant from one another and from a central axis. See Figures 3 and 4. From the teachings of Knapschafer, providing the system of Humbel with third and fourth compression members, in addition to the first and second compression members, such that the compression members are equidistant from one another and from a central axis of a base plate would have been obvious to one of ordinary skill in the art at the time the invention was made. This would provide greater support to the base plate.

Allowable Subject Matter

Claim 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Claim 18 defines a peripheral portion of the support ring as being convex and interfacing with an inner, concave wall of the base plate. This arrangement, in combination with the further limitations of the claims, is not suggested by the prior art and distinguishes the claimed invention over the prior art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hedlund et al., Haff, Dennis, Horn, Schweizer, Piotrowski, Dacklin, Ricks et al., Bayer, Dodge, Graf et al., Acuna US 5,984,325, Eglitis et al., De France, Work, White, Caputo et al., and Mash disclose binding systems with pivotal movement between components.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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